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Carnival Carting, Inc. and Local 813, International Brotherhood of Teamsters.¹ Cases 29–CA–20586 and 29–CA–22552

September 20, 2005

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On November 16, 2000, the National Labor Relations Board issued an Order² that, among other things, ordered Respondent Carnival Carting, Inc., its officers, agents, successors, and assigns, to make whole discriminatee Frank Mendez for any loss of earnings and other benefits suffered as a result of his discharge in violation of the National Labor Relations Act. On April 24, 2001, the United States Court of Appeals for the Second Circuit issued its judgment enforcing in full the Board's Order.³

A controversy having arisen over the amount of backpay due the discriminatee, on April 28, 2005⁴ the Regional Director for Region 29 issued a compliance specification and notice of hearing identifying the amounts of backpay due under the Board's Order, and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. The Respondent failed to file a timely answer to the compliance specification.

By letter dated May 24, the General Counsel notified the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by June 7, a motion for summary judgment would be filed. On June 7, the Respondent filed an answer generally denying the allegations in the compliance specification.

On July 7, the General Counsel filed with the Board a Motion for Partial Summary Judgment. The General Counsel argues that the Respondent's answer fails to meet the specificity requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations.

On July 13, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause

why the General Counsel's motion should not be granted. On August 10, after receiving an extension of time, the Respondent filed an Opposition to the General Counsel's Motion for Partial Summary Judgment, contending that the General Counsel's motion was procedurally defective.

On the entire record, the Board makes the following

Ruling on Motion for Partial Summary Judgment

Section 102.56(b) and (c) of the National Labor Relations Board's Rules and Regulations states, in pertinent part:

(b) *Contents of answer to specification.* The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.* If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

In its answer to the Regional Director's compliance specification, the Respondent has offered general denials

¹ We have amended the caption to reflect the disaffiliation of the International Brotherhood of Teamsters from the AFL–CIO effective July 25, 2005.

² The unpublished Order adopted, in the absence of exceptions, the decision of Administrative Law Judge Eleanor MacDonald issued on September 18, 2000 (JD(NY)–62–00).

³ 01–4034.

⁴ All dates are 2005 unless otherwise indicated.

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to the General Counsel's allegations in paragraph I, which pertains to the backpay period, and the allegations in paragraphs II, VII, and VIII, which pertain to the amount of backpay due discriminatee Frank Mendez. The General Counsel contends that such general denials do not comply with the requirements of section 102.56(b) and (c). We agree.

A general denial of allegations regarding the backpay period and gross backpay calculations is insufficient to comply with the specificity requirements of section 102.56(b) and (c). See *United States Service Industries*, 325 NLRB 485 (1998). A general denial of allegations regarding the pension fund contribution and severance plan contribution amounts is also insufficient to comply with the specificity requirements of Section 102.56(b) and (c). These amounts enter into the computation of total gross backpay, and are clearly within the Respondent's knowledge. See *Mining Specialists, Inc.*, 330 NLRB 99, 101 (1999). Because the Respondent failed to furnish supporting figures or fully set forth its position regarding the applicable premises as required by section 102.56(b) and (c), we find the Respondent's answer to be inadequate under that section. Accordingly, we grant the General Counsel's motion and deem that the allegations in paragraphs I, II, VII, and VIII of the compliance specification are admitted as true, and the Respondent is precluded from introducing evidence challenging them.⁵

⁵ As noted above, the Respondent filed an Opposition to the General Counsel's Motion for Partial Summary Judgment. The Respondent contends that the General Counsel's motion should be denied because it is procedurally defective. The Respondent argues that the original Board Order in this case is not an Order because it is not signed, and that the Order and motion are defective because a copy of the judge's decision and recommended Order were not attached to them. The Respondent further argues that the judgment of the United States Court

ORDER

It is ordered that the General Counsel's Motion for Partial Summary Judgment is granted as to paragraphs I, II, VII, and VIII of the compliance specification, and that those allegations are deemed to be true.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 29 for the purpose of arranging a hearing before an administrative law judge limited to the issues of interim earnings and expenses, net backpay, and medical expenses.

Dated, Washington, D.C. September 20, 2005

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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of Appeals for the Second Circuit is similarly defective because it relies on the Board's Order. We reject these contentions as lacking in merit.

First, the Respondent was served, by certified mail, with a copy of the decision and recommended order of the judge on September 25, 2000. Second, the Respondent was served, by certified mail, with a copy of the signed Board order adopting the decision and recommended order of the judge on November 27, 2000. Moreover, under Sec. 10(e) of the Act, the Board does not have jurisdiction to modify an Order that has been enforced by a court of appeals because, upon filing of the record with the court of appeals, the jurisdiction of that court is exclusive and its judgment and decree final, subject to review only by the Supreme Court. See *Grinnell Fire Protection Systems Co.*, 337 NLRB 141, 142 (2001).